

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

REENA CHOPRA,	No. C 09-05061 CW
Plaintiff,	ORDER DENYING
v.	PLAINTIFF'S
MEDICAL BOARD OF CALIFORNIA, et al.,	MOTION TO SET
Defendants.	ASIDE THE COURT'S
	ORDER OF NOVEMBER
	12, 2010
	(Docket No. 62)

Plaintiff Reena Chopra seeks relief from the Court's November 12, 2010 Order, which dismissed her action for failure to prosecute. Defendants County of Alameda, Cheryl Poncini, Kathleen Boyovich and Peter Van Oosting oppose Plaintiff's motion. Defendants Medical Board of California, Linda Whitney, Candis Cohen, Renee Threadgill, Jennifer Simoes, Barbara Yaroslavsky, Gerrie Shipske, Janet Salomonson, Mary Lynn Moran, Reginald Low, Jorge Carreon, John Chin, Shelton Duruisseau, Eric Esrailian, Hedy Chang, Frank Zerunyan and Sharon Levine did not respond to Plaintiff's motion.

A "court may relieve a party . . . from a final judgment, order, or proceeding" for "mistake, inadvertence, surprise, or excusable neglect" or "any other reason that justifies relief."

1 Fed. R. Civ. P. 60(b)(1) and (6). In assessing a plaintiff's Rule
2 60(b) motion, a court considers whether "the underlying claims have
3 a reasonable chance of success on the merits." Gonzalez Rucci v.
4 United States INS, 405 F.3d 45, 48 (1st Cir. 2005); see also
5 Cassidy v. Tenorio, 856 F.2d 1412, 1415 (9th Cir. 1988) (requiring
6 defendant to demonstrate a meritorious defense to set aside default
7 judgment).

8 On October 12, 2010, the Court warned Plaintiff that, if she
9 did not oppose Defendants' motions to dismiss by October 19, 2010,
10 her case would be dismissed for failure to prosecute; her
11 opposition briefs had been due October 7, 2010. On October 19,
12 Plaintiff responded that she had not received Defendants' motions,
13 which she eventually obtained from the Clerk of the Court, and
14 requested additional time to oppose them.¹ On November 2, 2010,
15 the Court granted Plaintiff's request, directed her to oppose
16 Defendants' motions by November 9, 2010 and warned her that, if she
17 did not do so, her action would be dismissed for failure to
18 prosecute. Notwithstanding the Court's first warning, subsequent
19 extension of time and second warning, Plaintiff failed to file any
20 timely opposition to Defendants' motions. On November 12, 2010,
21 because Plaintiff did not meet the November 9 deadline, the Court
22 dismissed her case for failure to prosecute.

23 Plaintiff filed her current motion On December 13, 2010. She
24 asserts that she did not receive the Court's November 2 Order and

25
26 ¹ Plaintiff appears to assert that she visited the Clerk's
27 Office on October 19, 2010 to check on the status of her case. She
28 did not inquire into the status of her case again until November
18, 2010.

1 did not know she had to oppose Defendants' motions by November 9.
2 However, Plaintiff has not notified either the Court or Defendants
3 of a change in her address, nor has she offered reason why she has
4 received some, but not all, papers related to this case at that
5 address. As noted above, Plaintiff claimed that she did not
6 receive Defendants' motions, for which Defendants have filed proofs
7 of service showing that Plaintiff was served through United States
8 Mail at the address listed in the Court's records. Further,
9 Plaintiff has acknowledged that she has received Court orders sent
10 to this address. None of the Court's orders sent to Plaintiff's
11 address has been returned as undeliverable.

12 Plaintiff offers no reason to excuse her neglect to prosecute
13 her case diligently. Cf. Carey v. King, 856 F.2d 1439, 1441 (9th
14 Cir. 1988); see also Soliman v. Johanns, 412 F.3d 920, 922 (8th
15 Cir. 2005) (stating that "a litigant who invokes the processes of
16 the federal courts is responsible for maintaining communication
17 with the court during the pendency of his lawsuit"). Nor does she
18 offer any extraordinary circumstance that prevented her from
19 prosecuting her case. United States v. Alpine Land & Reservoir
20 Co., 984 F.2d 1047, 1049 (9th Cir. 1993). Thus, relief from the
21 November 12 Order is not warranted.

22 Also, Plaintiff's claims do not appear to have a reasonable
23 chance of success on the merits, which further supports denying her
24 motion. Her claims are based on her state criminal prosecution,
25 and subsequent conviction, for the unauthorized practice of
26 medicine. These claims appear to be barred by Heck v. Humphrey,
27 512 U.S. 477 (1984). In addition, she challenges the
28

1 constitutionality of California Business and Professions Code
2 § 2052, which prohibits the unauthorized practice of medicine.
3 However, her objections do not appear well taken.

4 Accordingly, Plaintiff's motion is DENIED. (Docket No. 62.)

5 IT IS SO ORDERED.

6 Dated: 2/3/2011


CLAUDIA WILKEN
United States District Judge

UNITED STATES DISTRICT COURT
FOR THE
NORTHERN DISTRICT OF CALIFORNIA

REENA CHOPRA,

Plaintiff,

v.

MEDICAL BOARD OF CALIFORNIA et al,

Defendant.

Case Number: CV09-05061 CW

CERTIFICATE OF SERVICE

I, the undersigned, hereby certify that I am an employee in the Office of the Clerk, U.S. District Court, Northern District of California.

That on February 3, 2011, I SERVED a true and correct copy(ies) of the attached, by placing said copy(ies) in a postage paid envelope addressed to the person(s) hereinafter listed, by depositing said envelope in the U.S. Mail, or by placing said copy(ies) into an inter-office delivery receptacle located in the Clerk's office.

Reena Chopra
644 Fulton St. #2
Redwood City, CA 94061

Dated: February 3, 2011

Richard W. Wieking, Clerk
By: Nikki Riley, Deputy Clerk

United States District Court
For the Northern District of California